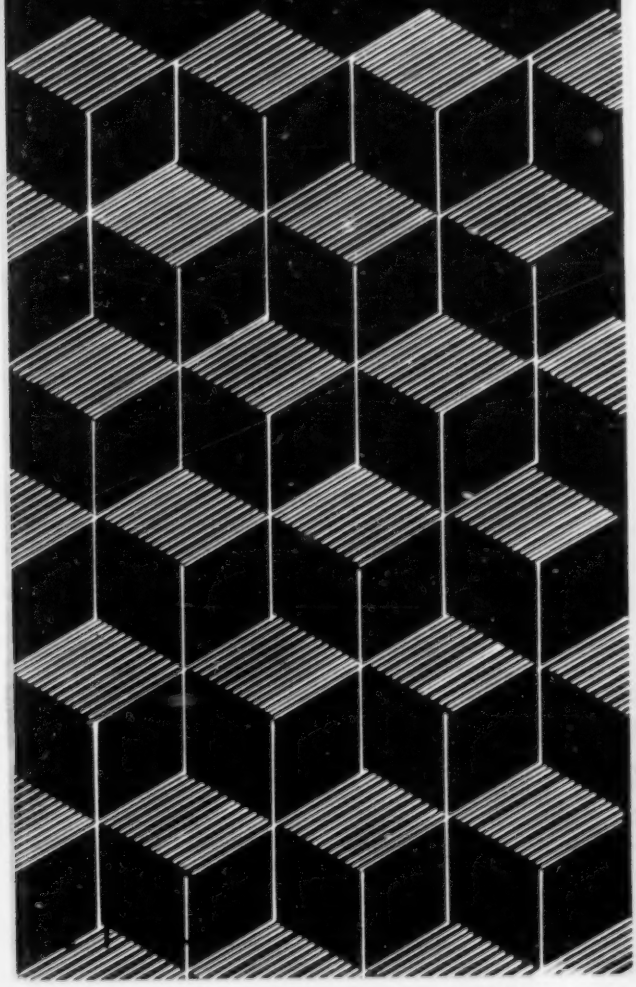
Trusteeship Requirements

Under the LMRDA
and the CSRA

U.S. Department of Labor
Labor-Management Services
Administration

Office of Labor-Management
Standards Enforcement

1980



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Trusteeship Requirements

Under the LMRDA
and the CSRA

U.S. Department of Labor
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Labor-Management Services
Administration
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Management Relations

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Foreword

Title III of the Labor-Management Reporting and Disclosure Act of 1959, as Amended (LMRDA), establishes trusteeship requirements for unions in the private sector and unions composed of Postal Service employees. Regulations implementing the standards of conduct provisions of the Civil Service Reform Act of 1978 (CSRA) (see 5 U.S.C. 7120 and 29 CFR Parts 207-209) establish similar trusteeship requirements for unions representing employees in most agencies of the executive branch of the Federal Government, the Library of Congress, and the Government Printing Office.

This pamphlet is designed to assist those who are subject to the trusteeship provisions of the acts. It presents general information about the trusteeship requirements and should not be construed as an official interpretation of the acts or the regulations implementing them. Three companion pamphlets are available which, as their titles suggest, contain additional information regarding the coverage and provisions of the acts—*Rights and Responsibilities Under the LMRDA and the CSRA*, *Reports Required Under the LMRDA and the CSRA*, and *Bonding Requirements Under the LMRDA and the CSRA. Electing Union Officers*, which contains general information and guidelines for conducting union elections, is also available. Copies of these publications may be obtained from any area office of the Labor-Management Services Administration (LMSA) in the cities listed on page 19 .

Note: Before the effective date of the CSRA standards of conduct in January 1979, unions representing employees in most agencies of the executive branch of the Federal Government were subject to the truseeship requirements in sec. 18 of Executive Order 11491 and the implementing regulations. The trusteeship requirements of the CSRA and the implementing regulations are similar to those that existed under Executive Order 11491.

Trusteeships in General

What is a trusteeship?

Sec. 3(h) of the LMRDA defines a "trusteeship" as "any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constituion or bylaws." The same definition applies under the CSRA. For trusteeship purposes under the two acts, "labor organization" encompasses any labor union except a State or local central body or a union representing solely public employees of a State or political subdivision of a State, such as a county or municipality. The term "subordinate body" is synonymous with "subordinate labor organization," and any trusteeship imposed over a body that meets the definition of "labor organization" is therefore subject to the trusteeship provisions.

Why regulate trusteeships?

Trusteeships are normally established to assist subordinate unions in difficulty and promote union democracy. During hearings held prior to the enactment of the LMRDA, however, Congress became aware that the power to impose a trusteeship was sometimes used to "milk" local treasuries and perpetuate power by controlling votes undemocratically. The LMRDA therefore contains provisions for civil and criminal enforcement to correct abuses, but it neither prohibits nor discourages the reasonable and legitimate use of trusteeships.

What do the trusteeship provisions require?

Title III of the LMRDA prescribes specific conditions under which a trusteeship may be established and continued; prohibits the transfer of certain funds to the parent union, and the counting of votes of a trusteed union's delegates unless they were chosen by a secret ballot election in which all the members in good standing were eligible to participate; re-

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quires reporting of a trusteeship by the parent union; and provides means of relief for the union member or subordinate union either directly in court or through the Secretary of Labor.

The CSRA requires any union representing or seeking to represent Federal employees covered by the Act to comply with trusteeship standards that conform generally to the principles applied to unions in the private sector. Therefore, except for certain enforcement procedures, the trusteeship requirements are essentially the same for unions subject to the LMRDA or the CSRA.

When does a trusteeship exist?

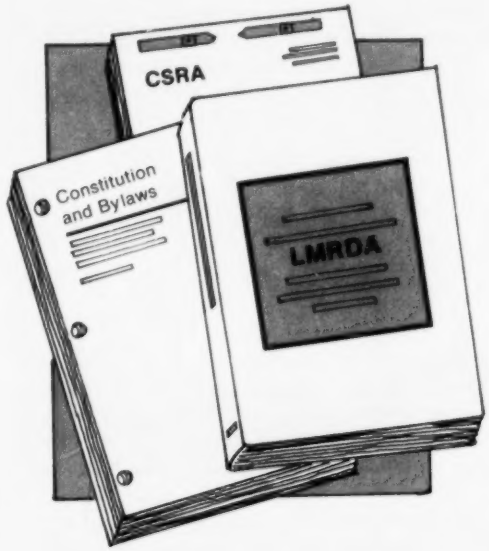
A trusteeship exists whenever a parent union suspends a subordinate union's constitutional or statutory autonomy; that is, whenever the parent assumes control over affairs that the subordinate would normally handle itself. Thus, an action referred to as an "administratorship," "stewardship," or "supervisorship" is a trusteeship if it involves a suspension of autonomy otherwise available, regardless of the word used to describe it. Even when the suspension of autonomy is only partial, a trusteeship exists and is subject to the LMRDA or the regulations implementing the CSRA.

Autonomy otherwise available. The degree of control over its own affairs a union is normally entitled to exercise depends on both the parent union's constitution and the provisions of the LMRDA and the CSRA.

The LMRDA and the CSRA give every union a certain measure of autonomy in its elections and other matters, regardless of whether the parent constitution so provides. For example, if a parent union deprives any of its subordinates of the right to elect officers within the period required by the LMRDA or the CSRA, this action constitutes the imposition of a trusteeship.

A parent union may not suspend the autonomy of all of its subordinates with respect to the election of officers and delegates and

the general conduct of business. A parent union may, however, uniformly suspend certain other rights of all subordinates in accordance with its constitution without creating a trusteeship. For example, when an international president intervened in a seniority dispute between two merged locals in keeping with a convention resolution permanently removing the right of all locals to decide similar disputes, the Department concluded that there was no suspension of autonomy otherwise available and, therefore, no trusteeship. If the removal of this right had not applied to every local, however, the locals affected by it would normally have been considered under trusteeship.



Supervision of a local. A parent union's appointment of a supervisor over a local union may constitute a trusteeship, depending on the kinds of duties the supervisor performs. If he merely attends meetings, listens to discussions, and offers advice, no suspension of autonomy normally occurs. If he exercises a degree of control over the local, however, by

taking such action as directing that the local cancel a scheduled meeting or discharge one of its employees, then the autonomy of the local is suspended and a trusteeship exists.

Court-appointed receiverships. A State court's appointment of a neutral party to manage a union's property and money when they are the subject of legal action is not considered a trusteeship because the local's autonomy is suspended by State law and not by a parent union.

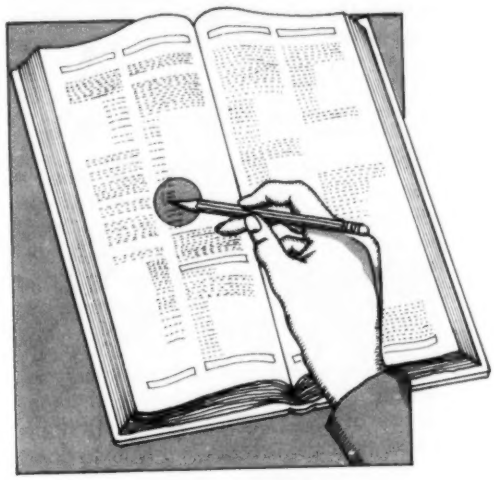
Mergers. The merger of two locals to form a new local or the consolidation of one local into another does not in and of itself create a trusteeship.

Foreign locals. The provisions of the LMRDA with respect to the imposition of trusteeships apply to an international union whose headquarters are located in the United States when it imposes a trusteeship over a foreign local, because the union and its officers in the United States are subject to the Act.

Establishing a Trusteeship

For what purposes may a trusteeship be established?

Sec. 302 of the LMRDA and 29 CFR 208.26 require that a trusteeship be established and administered only in accordance with the constitution and bylaws of the union assuming the trusteeship and that it be for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of the union. These purposes are discussed in the examples below.



Correcting corruption or financial malpractice. The conduct that may justify the imposition of a trusteeship can be as serious as embezzlement of funds by local officers, but it need not be of a criminal nature. Trusteeships may be imposed to correct irresponsible leadership or to remedy activity that jeopardizes the fiscal integrity of the union.

Assuring the performance of collective bargaining agreements. A trusteeship may be established to assist a weak local, one

whose officers fail to administer existing agreements properly, or one that is unable to offer adequate membership representation. A trusteeship may also be established because of unauthorized or "wildcat" strikes, or because of complications arising out of authorized strikes.

Restoring democratic procedures. Trusteeships imposed to restore democratic procedures include those established because of improper election procedures, inability to maintain orderly meetings, failure to hold meetings, coercion of rank and file members, or domination of the subordinate union by local officers through denial of democratic rights.

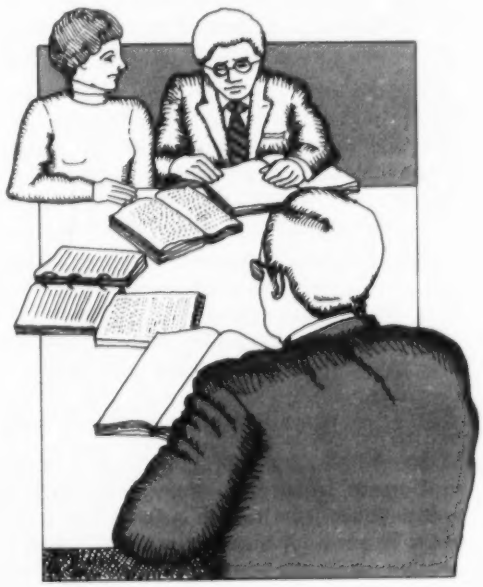
Otherwise carrying out the legitimate objects of the union. Congress included this broad purpose because of the difficulty of listing all the possible circumstances that would justify imposing a trusteeship. Purposes that have been found valid include:

- Caretaker trusteeships imposed when a subordinate union cannot function autonomously for reasons such as a plant shutdown or other event that drastically reduces a local's membership; a lack of experience in a newly chartered local; or an unexpected loss of leadership;
- Correcting financial mismanagement, including difficulties such as insolvency, failure of the subordinate to maintain proper financial records, or failure to bond its officers properly;
- Correcting administrative mismanagement, including a local's failure to carry out the national union's policies or to administer procedures promulgated by it, such as its constitution and bylaws;
- Eliminating racial discrimination and unequal treatment within a local; and
- Preventing the destruction of an existing bargaining unit and preserving the status of a certified bargaining representative.

What purposes are unlawful?

A trusteeship is unlawful if it does not conform to the constitution and bylaws of the parent union or if it is not imposed for one of the specified purposes. In addition, the LMRDA and 29 CFR 208.27 specifically prohibit certain voting and financial activities during a trusteeship, and any trusteeship imposed for such purposes is unlawful. (See pages 9-11.) The following examples, taken from court cases, illustrate some of the purposes that courts have held to be unlawful under certain circumstances:

- A trusteeship imposed because a local was delinquent in paying a per capita tax increase it was challenging in court;
- A trusteeship imposed to force a local to affiliate with a district council and to raise dues as a result of the affiliation; and
- A trusteeship established in bad faith primarily to maintain the status quo in the union and to keep the entrenched leadership in power, even though conditions



that had existed in the union for some time would otherwise have been legitimate grounds for imposing a trusteeship.

Is a hearing required?

If the constitution and bylaws of a parent union provide for a hearing in connection with the estaolishment of a trusteeship, then any trusteeship the union imposes is not valid unless a hearing is held. In addition, courts have held that regardless of whether the parent union's constitution so provides, the subordinate union should ordinarily be given a fair hearing, including notice of the charges and an opportunity to defend. The hearing should be held before the trusteeship is imposed or within a reasonable time thereafter.

Administering a Trusteeship

How long may a trusteeship last?

In formulating title III of the LMRDA, Congress saw the trusteeship as a temporary administrative remedy that should be used only to correct emergency situations in subordinate unions. This viewpoint also applies to the use of the trusteeship by unions subject to the CSRA. The parent union and the trustee should initiate positive action to remedy the cause of imposition of the trusteeship as rapidly as possible. The semiannual reports required to be filed with the Department of Labor by the parent union must detail the specific reasons for continuing the trusteeship during the preceding 6 months and the action being taken to correct the situation.

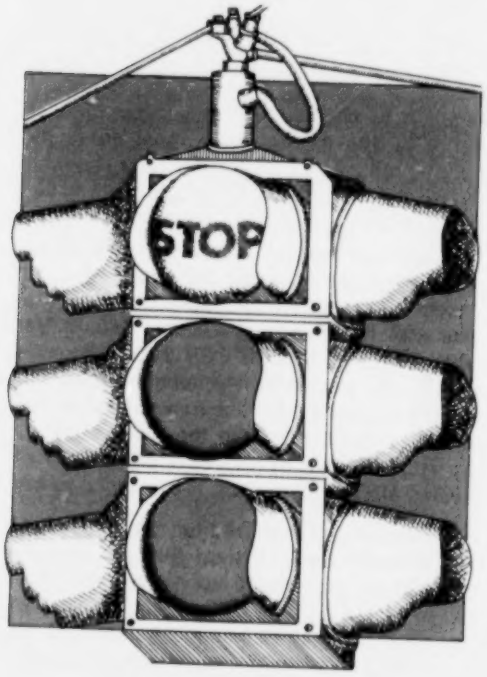
A further measure of the concern that a trusteeship be only a temporary action is the limited 18-month presumption of validity that was established for trusteeships. Sec. 304(c) of the LMRDA and 29 CFR 208.28 provide that in any court action or administrative enforcement proceeding, a trusteeship established in conformity with the parent union's constitution and bylaws and authorized or ratified after a fair hearing is presumed to be:

- Valid for 18 months from the date of its establishment, except that the validity may be challenged upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under the acts; and
- Invalid after 18 months, unless the parent union shows by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under the acts.

What activities are prohibited?

Sec. 303 of the LMRDA and 29 CFR 208.27 prohibit the transfer of current receipts or other funds of a subordinate body under trusteeship to the parent union except for the normal per capita tax and assessments pay-

able by subordinate bodies not in trusteeship. This prohibition bars a transfer of funds from a trusteed subordinate union to any higher body, including the transfer of funds of a trusteed intermediate body to a higher intermediate body. It does not, however, prevent the distribution of the assets of a union in accordance with its constitution and bylaws upon its bona fide dissolution.



Legitimate expenses that are not prohibited transfers of funds include:

- The payment of legal fees for the defense of the trusteeship when the court finds the trusteeship valid;
- Expenses incurred by a trustee in connection with the supervision of a subordinate union, if they are of the type that would be valid if incurred by an officer of the subordinate union; and

- Legitimate obligations of the trusteed union, such as a deduction by the international from a trusteed local's share of its checkoff dues to obtain repayment of a loan made to the local before the trusteeship was imposed.

Sec. 303 of the LMRDA and 29 CFR 208.27 also prohibit the counting of the votes of delegates from a trusteed union in any convention or election of officers of the parent union unless the delegates have been chosen by secret ballot in an election in which all members in good standing of the trusteed union were eligible to participate. The term "convention" includes any regular or special convention of a national or international union or intermediate body such as a joint council or conference, and any organized assembly of delegates from constituent units that meets to act on basic union policy and in which the delegates represent the interests of the members of their respective units. This prohibition applies to voting on any issue, not merely to voting for officers.

Do other provisions of the acts apply?

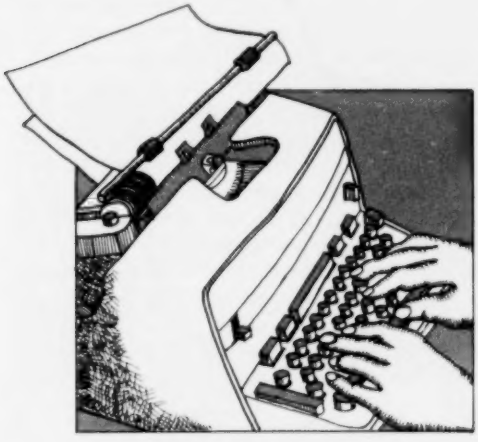
The other titles of the LMRDA apply during a trusteeship to the extent that autonomy is retained by the trusteed union. The reporting requirements in title III would necessarily supersede those in title II, and a trusteeship that results in a complete suspension of autonomy would normally suspend the applicability of title IV (Elections). In a regular election of officers or an election to terminate the trusteeship, however, the election safeguards of title IV must be applied.

The same situation would apply concerning the applicability to Federal employee unions of comparable provisions of the regulations implementing the CSRA standards of conduct.

Reports

What reports are required?

A union assuming a trusteeship over a subordinate union must file certain trusteeship and other reports with the Office of Labor-Management Standards Enforcement (LMSE).



Initial trusteeship report. Within 30 days after assuming the trusteeship, the parent union must file an initial report on the Trusteeship Report, Form LM-15, containing the following information:

- The name and address of the subordinate union;
- The date of establishing the trusteeship;
- A detailed statement of the specific reason or reasons for establishing the trusteeship;
- The nature and extent of participation of the trusteed union's membership in the selection of delegates to represent it at conventions and in the election of officers of the parent union; and
- A full account of the financial condition of the subordinate as of the time the trusteeship was established.

Semiannual trusteeship reports. The parent union must file a report covering each 6-month period for the duration of the trusteeship. Reports must be filed semiannually, using Form LM-15 but omitting the Statement of Assets and Liabilities on page 2 of the form. The first semiannual report is due within 30 days after the end of the 6-month period following the establishment of the trusteeship. Thereafter, a report is due within 30 days after the end of each 6-month period following the closing date of the previous semiannual report. Reports must explain in detail the reasons for continuing the trusteeship and the actions being taken to correct the emergency for which the trusteeship has been imposed.

Annual financial reports. During the trusteeship the parent union assumes responsibility for filing an annual financial report on Form LM-2 on behalf of the trusteed union. An Information and Signature Sheet for Financial Report of Labor Organization under Trusteeship, Form LM-6, must accompany the annual financial report. Both forms must be filed within 90 days after the end of the trusteed union's fiscal year. (**Note:** A Form LM-2 must be used for any union under trusteeship, even though it might otherwise be eligible to file its annual report on the shorter Form LM-3.)

If, during the period covered in the annual financial report, any change has taken place in the trusteed union's constitution and bylaws, or in its practices and procedures for which separate statements must be filed, the parent union must file with the Form LM-2 a Form LM-1A, Report of Current Status: Labor Organization Information Supplement, which identifies the changes, and two copies of the amended constitution and bylaws.

Terminal reports. Within 90 days after the termination of the trusteeship or the loss of identity as a reporting union by the trusteed union through dissolution, merger, consolidation, or otherwise, the parent union must file:

- A Terminal Trusteeship Information Report, Form LM-16, disclosing the date

and method of terminating the trusteeship, the names and titles of the subordinate union's officers, the method of selecting them, and other information;

- A terminal financial report on Form LM-2, giving a detailed account of the subordinate's financial condition at the time of the termination, together with a Form LM-6; and
- A Form LM-1A, if any changes have occurred in the information previously filed on Form LM-1 or LM-1A.

Other reports. If a union comes under trusteeship before filing a Labor Organization Information Report, Form LM-1, the trustees are responsible for submitting the Form LM-1, along with two copies of the union's constitution and bylaws, within the 90-day period after the trusteed union first becomes subject to the LMRDA or the CSRA.

A Schedule on Selection of Delegates and Officers, Form LM-15A, must be filed with the initial, semiannual, and terminal trusteeship reports if, during the reporting period, there was any:

- Election of officers of the parent union; or
- Convention or other policy-determining body to which the subordinate union sent delegates or would have sent delegates had it not been under trusteeship.

Form LM-15A must contain detailed information on the representation of the trusteed union, the method of nominating delegates, the means of notifying the members about electing the delegates, and the extent of the delegates' participation in conventions or elections of the parent union.

What signatures are required?

All trusteeship reports on Forms LM-15, LM-15A, and LM-16 must be signed by the president and treasurer or corresponding principal officers of the parent union, and by the trustees of the trusteed subordinate union. The trustees should also sign a Form LM-6

when filing a Form LM-2 and, when needed, Forms LM-1 and LM-1A, to show that they are responsible for the information contained in the reports, because the forms do not have places for trustees' signatures. Those who sign the reports are personally responsible for filing them and for assuring the accuracy of the information they contain.

Where are reports mailed?

All reports submitted under the trusteeship provisions of the LMRDA or the CSRA should be mailed to:

Director
Office of Labor-Management Standards Enforcement
Labor-Management Services Administration
U.S. Department of Labor
Washington, D.C. 20216

Are reports publicly available?

Every union required to submit reports must make the information required in the reports available to all of its members and must permit its members for just cause to examine the books, records, and accounts necessary to verify the reports.

In addition, all reports are public information, and the Secretary may publish any information or data he obtains from reports submitted under the reporting provisions of the LMRDA or the CSRA. He may also use for statistical and research purposes any information and data included in the reports filed with him.

Any person may examine or purchase copies of the reports. All reports filed with the Secretary are available at LMSE's national office in Washington, D.C., and each LMSA area office has duplicate reports for all reporting individuals and organizations within its geographic jurisdiction.

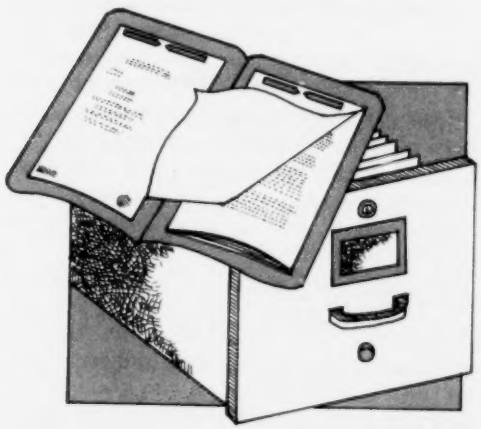
LMSE and LMSA area offices will provide for:

- Inspecting reports on request;

- Furnishing copies of such reports on request and on payment of a service charge of 10 cents per page; and
- Furnishing copies of reports and documents to State agencies without charge, on request from the Governor of the State.

What records must be maintained?

Every person required to file a report must maintain records by which the report can be verified, explained or clarified, and checked for accuracy and completeness. The records must include all vouchers, worksheets, receipts, and applicable resolutions and must be available for examination for at least 5 years after the filing of reports based on them.



Enforcement

How are the acts enforced?

The LMRDA trusteeship reporting requirements are enforced under sec. 210 of the Act, which allows the Secretary of Labor to file civil actions in U.S. district courts to restrain violations and bring about compliance. The Secretary cannot, however, enforce the other provisions of title III without a written complaint of a union member or subordinate union. The Secretary shall investigate any such complaint and, if he finds probable cause to believe that a violation has occurred and has not been remedied, may bring a civil action in a U.S. district court. The Secretary is prohibited from disclosing the identity of the complainant.

As an alternative to filing a complaint with the Secretary, a union member or subordinate union affected by a violation of title III (except the reporting requirements) may bring civil action directly in a U.S. district court. Once an action has been instituted in a district court by the Secretary, however, that court has exclusive jurisdiction over the trusteeship.

Enforcement of the CSRA's trusteeship requirements is through administrative action involving the filing of a complaint by the LMSE Director, a hearing before a Labor Department administrative law judge, the judge's report and recommendation, and a decision and order by the Assistant Secretary of Labor for Labor-Management Relations.

What are the penalties for violations?

Willful violations of the trusteeship requirements of the LMRDA are punishable by fines of up to $10,000, imprisonment for up to 1 year, or both. Willful violations of the trusteeship requirements of the CSRA may result in administrative enforcement action.

In addition, officials who make false statements on reports required to be filed with LMSE, including statements relating to the trusteeship requirements of the acts, are subject to criminal penalties. If the report was

submitted under the LMRDA, the penalty is a fine of up to $10,000, imprisonment for up to 1 year, or both. If the report was submitted under the CSRA, the penalty imposed under 18 U.S.C. 1001 is a fine of up to $10,000, imprisonment for up to 5 years, or both.

Additional Information

If you would like additional information, assistance, or publications concerning the LMRDA or the standards of conduct of the CSRA, you may write or visit one of the LMSA area offices located in the following cities:

Atlanta, GA	Los Angeles, CA
Boston, MA	Miami, FL
Buffalo, NY	Minneapolis, MN
Chicago, IL	Nashville, TN
Cleveland, OH	New Orleans, LA
Dallas, TX	New York, NY
Denver, CO	Philadelphia, PA
Detroit, MI	Pittsburgh, PA
East Orange, NJ	San Francisco, CA
Hato Rey, PR	Seattle, WA
Honolulu, HI	St. Louis, MO
Kansas City, MO	Washington, DC

Consult your local telephone directory listings under United States Government, Labor Department, Labor-Management Services Administration, for the address and telephone number of the nearest LMSA area office.

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